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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/667,420	09/21/2000	Mariko Okamoto	07336.0003-00000	8873

22852 7590 06/21/2004

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EXAMINER

FUBARA, BLESSING M

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 06/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/667,420

Applicant(s)

OKAMOTO ET AL.

Examiner

Blessing M. Fubara

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-10 and 18-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-10 and 18-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 03/05/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Examiner acknowledges receipt of request for continued examination under 37 CFR

1.114, request for extension of time, amendment, IDS and Rule 131 affidavit, all filed 03/05/04.

#### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicants' submission filed on 03/05/04 has been entered.

#### ***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1-4, 6-10, 18-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 11-021227 and Cernasov et al. (US 5,976,510).

JP 11-021227 discloses a gel composition comprising 1.0-80.0 weight percent polyacrylamide, Vaseline or ceresin, 0.1-20.0 weight percent polyoxyethylene sorbitan fatty acid ester as the non-ionic surfactant and organopolysiloxane (abstract). The JP reference in the translation provided by applicants suggests that pigments and fillers may be used in the gel composition and embodiments 4 and 5 contain pigments and talc and mica.

The JP-11-021227 translation teaches that the desired cosmetic formulation is one that does not run off from hands or face and is not sticky (paragraph 003) and one that would retain

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moisture and formulations contain inorganic pigments or colorants, pearl agent, antioxidants and ultraviolet light absorber (paragraph 0019 and embodiments 4 and 5).

JP 11-021227 teaches the instant cosmetic composition except that the JP reference does not include water-repellant agent. Cernasov teaches a cosmetic tanning and sunscreen composition that is water repellent, stable and moisturizing (abstract). The composition of Cernasov contains inorganic pigments that are treated with perfluoroalkyl phosphates (column 1, lines 32-67 and examples 1-3) and perfluoroalkyl phosphate is listed by applicants' specification as a water repellent and oil repellent agent.

The teachings of both references are directed to cosmetic composition. Cernasov is relied upon for a teaching of a cosmetic tanning and sunscreen composition that contains perfluoroalkyl phosphate treated inorganic pigments. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare a cosmetic composition according to the teachings of JP 11-021227 and include the perfluoroalkyl phosphate of Cernasov with the expectation that the resulting formulation would have excellent moisture retention characteristics. One having ordinary skill in the art would have been motivated to modify the composition of JP 11-021227 to include the perfluoroalkyl phosphate treated pigments of Cernasov in order for the composition to have excellent moisture retention characteristic and excellent water-repellant and oil-repellant characteristics.

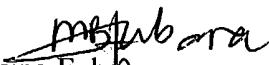
Applicants' 132 declaration does give data on how the instant composition and the composition of the prior art affect skin.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is (571) 242-0594. The examiner can normally be reached on 7 a.m. to 3:30 p.m. (Monday to Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Blessing Fubara  
Patent Examiner  
Tech. Center 1600